

**International Brotherhood of Electrical Workers,  
Local Union No. 98 and LaSalle University.**  
Case 4-CD-930

September 30, 1997

**DECISION AND DETERMINATION OF  
DISPUTE**

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
HIGGINS

The charge in this Section 10(k) proceeding was filed on February 9, 1996, by LaSalle University (the University), alleging that International Brotherhood of Electrical Workers, Local Union No. 98 (Local 98) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the University to assign certain work to employees represented by Local 98 rather than to employees of David Brandolph Electric Co., Inc., (Brandolph), who are not represented by any labor organization. A hearing was held on April 2, 1996, before Hearing Officer Allene McNair-Johnson. Thereafter, the University and Local 98 filed briefs.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

David Brandolph Electric Co., Inc., is a Pennsylvania corporation engaged in the business of installation and service of electrical products. During the 12-month period preceding the hearing, Brandolph's gross revenues exceeded \$50,000. LaSalle University is a nonprofit corporation providing comprehensive liberal arts education and instruction at a campus in Philadelphia, Pennsylvania. During the 12-month period preceding the hearing, the University received gross revenues in excess of \$1 million. In addition, the University purchased and received materials and supplies valued in excess of \$10,000 directly from points located outside the Commonwealth of Pennsylvania.

We find that Brandolph and the University are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties have stipulated, and we find, that Local 98 is a labor organization within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

The University maintains its own physical facility department for the performance of maintenance and repair work throughout its campus facility. It also contracts out for certain maintenance and repair work, in-

cluding electrical work. It uses a competitive bidding system in selecting a contractor.

Brandolph Electric is a private contractor engaged in the installation and service of electrical products, including lighting. Since 1994, Brandolph has successfully bid for several jobs at the University. These jobs included the repair of lighting control circuits in the University's theater in 1995, the repair of overhead lighting above the University's swimming pool in December 1995, and the installation of new lighting fixtures in the Frances and Edwards dormitories in January 1996.

Local 98 does not have a collective-bargaining relationship with either University or, as previously indicated, with Brandolph. According to the undisputed testimony of Hubert Thomas, the University's director of physical facilities, two representatives of Local 98 spoke to him on December 7, 1995. Brandolph had just completed its repair work at the University's swimming pool and was soon to begin its installation work in the dormitories. Local 98's representatives twice threatened to picket the University unless it assigned its electrical work to employees represented by Local 98 rather than to Brandolph and its unrepresented employees.

At the time of the hearing, Brandolph had completed the electrical work at the swimming pool and in the two dormitories. At the hearing, Local 98 offered a disclaimer of interest in this particular work. Although Brandolph had no pending contracts to perform work for LaSalle, the University planned to solicit competitive bids for additional electrical work. Brandolph planned to bid for this work.

*B. The Work in Dispute*

The notice of hearing describes the work in dispute as "[t]he electrical work by David Brandolph Electric Co., Inc. at LaSalle University, Philadelphia, Pennsylvania." At the time Local 98 made its claim for work that the University had awarded to Brandolph, Brandolph had already completed the electrical work at the University's swimming pool. A claim for this completed work would not create a jurisdictional dispute. See *Laborers (Albay Construction)*, 314 NLRB 989, 990 (1994). The only work remaining to be performed by Brandolph involved the installation of lighting fixtures in the University's Frances and Edwards dormitories. We therefore limit our definition of the work in dispute to this work.

*C. Contentions of the Parties*

The University contends that reasonable cause exists to believe that Local 98 has violated Section 8(b)(4)(ii)(D) of the Act, that Local 98's disclaimer of the work in dispute is ineffective, and that the work in dispute should be awarded to Brandolph's unrepresented employees.

sented employees based on the factors of employer preference and past practice, area and industry practice, relative skills, and economy and efficiency of operation. The University further seeks a broad award covering the performance of any future work performed by Brandolph at the University.

Local 98 contends that it has effectively disclaimed the work in dispute so that the Board should quash the notice of hearing in this case in the absence of a jurisdictional dispute. If the Board decides to issue an award of work, Local 98 contends that any such award should be limited to the actual work in dispute and should not cover potential future work by Brandolph at the University.

#### D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that reasonable cause exists to believe that Section 8(b)(4)(D) of the Act has been violated. It is undisputed that Local 98's representatives threatened to picket the University in order to force the University to reassign the work in dispute from Brandolph's employees to employees represented by Local 98. We therefore find that there is reasonable cause to believe Section 8(b)(4)(D) has been violated.

We further find no merit in Local 98's contention that it has effectively disclaimed the work in dispute. A disclaimer offered only at the time of the hearing, after all of the work in dispute has been completed, is an ineffective attempt to avoid an authoritative decision on the merits of the dispute. E.g., *Electrical Workers IBEW Local 103 (Comm-Tract Corp.)*, 307 NLRB 384, 386 (1992). Accordingly, and since the parties have stipulated that no voluntary means for resolution of the dispute exists, we find that the dispute is properly before the Board for determination.

#### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.<sup>1</sup>

<sup>1</sup>For the purposes of analyzing factors relevant to the determination of this jurisdictional dispute, Brandolph is the employer in control of the work in dispute. See, e.g., *Sheet Metal Workers Local 28 (Hausman Engineering)*, 316 NLRB 1149, 1150, and cases cited in fn. 2 (1995).

#### 1. Employer preference and past practice

The record shows that, since 1982, Brandolph's preference and consistent practice has been to use its own unrepresented employees. Since 1994, Brandolph has used these employees to perform work under four or five contracts with the University. We therefore find that the factor of employer preference and past practice favors the award of the work in dispute to Brandolph's unrepresented employees.

#### 2. Area and industry practice

The record indicates that both Brandolph's unrepresented employees and employees represented by Local 98 have performed electrical work similar to the work in dispute for the University and for other employers in the Pennsylvania-New Jersey area. This factor does not favor either group of employees.

#### 3. Relative Skills

The record does not show any marked difference in skill level between the unrepresented employees of the Employer and employees represented by Local 98. Both groups of employees apparently have the requisite skills to perform the work in dispute. This factor does not favor either group of employees.

#### 4. Economy and Efficiency of Operations

Brandolph Vice President David Brandolph expressed satisfaction with the efficiency and timeliness of the unrepresented employees who were assigned to perform the work in dispute. There is no evidence concerning the impact on Brandolph's economy and efficiency if the Board were to award the work in dispute to employees represented by Local 98. We find that the evidence concerning this factor slightly favors an award of the work to Brandolph's unrepresented employees.

#### 5. Job Loss

The evidence here fails to show that either group of employees would lose jobs if the work in dispute were assigned to the other group. We, therefore, find this factor does not favor either group of employees.

#### Conclusion

After considering all the relevant factors, we conclude that the unrepresented employees of Brandolph are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference, employer past practice, and economy and efficiency of operations, and in light of the absence of any

factor which clearly would support an award of the work to employees represented by Local 98.<sup>2</sup>

#### Scope of the Award

The University requests that the Board issue a broad award encompassing all future work performed by Brandolph at the University. In order to justify such an award, the Board requires evidence that the disputed work is a source of controversy that is likely to recur and that the charged party has a proclivity to engage in unlawful conduct in order to obtain work similar to that in dispute. E.g., *Bricklayers (Sesco, Inc.)*, 303 NLRB 401, 403 (1991). As for the specific work in this proceeding, the installation of lighting fixtures, it is speculative at best whether the University will even be awarding similar work in the future, much less whether Brandolph will succeed in obtaining further work of that type.<sup>3</sup> In addition, there is no showing that Local 98 has a proclivity to engage in unlawful conduct to obtain this work. With regard to any other work that Brandolph might succeed in obtaining from the University, we have no basis for expanding our award to such work, because we have only made a determination in this proceeding that Brandolph's employees are entitled to perform installation of lighting fixtures; we have made no such determination with regard to other types of work that the University might award to Brandolph in the future. There are therefore no grounds upon which we could base an award encompassing all future work that Brandolph might perform at the University, as requested by the University.

In these circumstances, we find insufficient grounds to issue a broad award. Our determination of the work in dispute is limited to the controversy that gave rise to this proceeding.

#### DETERMINATION OF DISPUTE

1. Employees of David Brandolph Electric Co., Inc., who are currently not represented by any labor organization, are entitled to perform the installation of lighting fixtures in the University's Frances and Edwards dormitories pursuant to Brandolph's contracts with LaSalle University.

2. International Brotherhood of Electrical Workers, Local Union No. 98, is not entitled by means pro-

scribed by Section 8(b)(4)(D) of the Act to force LaSalle University to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Brotherhood of Electrical Workers, Local Union No. 98 shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

MEMBER HIGGINS, dissenting in part.

Contrary to my colleagues, I would not confine the award to the two sites involved here. The work on those sites was completed prior to the 10(k) hearing and, in the circumstances of this case, an award confined to those sites is inadequate. Thus, when Local 98 threatened the University with picketing to obtain the work, it explicitly stated that "[a]s long as you have Brandolph in here doing any job at any building, we're going to picket the place." A similarly broad threat was uttered when Local 98 said that it would disrupt the University's recruiting efforts.

In their effort to justify a narrow award, my colleagues artificially define the dispute as one pertaining solely to Brandolph's installation of lighting fixtures at two LaSalle dormitories. However, it is clear that the dispute is not so confined. The notice of hearing describes the work in dispute as "[t]he electrical work by David Brandolph Electric Co. at LaSalle." In addition, as noted above, Local 98 threatened to picket as long as Brandolph's employees were "doing *any* job at *any* building at LaSalle." (Emphasis added.) In these circumstances, my colleagues err by now seeking to narrow the scope of the dispute and the award.

My colleagues also argue that there is no certainty that Brandolph will obtain future contracts. But, certainty is not required. The Board can enter a broad order "if there is evidence that similar disputes will occur in the future."<sup>1</sup> In the instant case, there is such evidence. Brandolph intends to bid on LaSalle work in the future, and its successful low bids here would suggest that a future selection of Brandolph is not unlikely.

<sup>2</sup>*Laborers Local 334 (Dynamic Construction Co.)*, 236 NLRB 1131, 1134 (1978).

<sup>3</sup>See, e.g., *Las Vegas Building Trades Council*, 173 NLRB 1339, 1344 (1968).

<sup>1</sup>*Operating Engineers Local 667 (Frank P. Badolato & Son)*, 135 NLRB 1392 (1962), cited with approval in *Las Vegas Building Trades Council*, 173 NLRB 1339, 1344 (1968).

Further, the fact that LaSalle is seeking a broad award would suggest that it is satisfied with Brandolph's performance. In these circumstances, Local 98's broad threat clearly establishes a likelihood of similar disputes in the future.

In my view therefore, only a broad award can be effective here.<sup>2</sup>

---

<sup>2</sup> Although the award would be "broad" in the sense indicated, it would be confined to electrical work disputes between Local 98 and Brandolph's unrepresented employees, at LaSalle jobsites.